

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0251
Use Tax
For the Years 1998, 1999, and 2000

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ISSUE

I. Use Tax—Assessment; Production Supplies and Parts Washer Cleaner

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-4; IC 6-2.5-5-3(b);
IC 6-2.5-5-5.1(b); IC 6-2.5-5-6.

Taxpayer protests the assessment of use tax on various maintenance chemicals and supplies.

II. Use Tax—Assessment; Trial Materials

Authority: IC 6-2.5-5-6.

Taxpayer protests the assessment of use tax on trial materials.

III. Use Tax—Assessment; Materials to Repair Roof Collapse

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1.

Taxpayer protests the assessment of use tax on materials used to repair non-production areas of its facility.

IV. Use Tax—Assessment; Machinery, Tools, and Equipment

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1.

Taxpayer protests the assessment of use tax on items used partially and wholly outside of exempt production.

V. Use Tax—Assessment; Rental of Tangible Personal Property

Authority: IC 6-2.5-4-1; IC 6-2.5-4-10; IC 6-2.5-3-2(a).

Taxpayer protests the assessment of use tax on rentals of equipment used partially and wholly outside of exempt production.

VI. Use Tax—Assessment; Publications and Subscriptions

Authority: IC 6-2.5-5-17.

Taxpayer protests the assessment of use tax on non-newspaper publication purchases.

VII. Use Tax—Assessment; Catering Service Charges

Authority: IC 6-2.5-5-20(c)(3).

Taxpayer protests the assessment of use tax on catered food and services.

VIII. Use Tax—Assessment; Other Purchases

Authority: IC 6-2.5-3-2(a); IC 6-2.5-3-4(a).

Taxpayer protests the assessment of use tax on various miscellaneous items.

STATEMENT OF FACTS

Taxpayer manufactures flexible retail and industrial plastic packaging used to protect food and other products. Taxpayer has one Indiana location, has locations in other states, and is headquartered in South Carolina. An audit was conducted; it did not adjust reported sales tax. An examination of purchases was made and use tax was assessed where the Department determined it to be due. Taxpayer filed a protest to the assessments and a hearing officer was assigned to hear the protest. A hearing date was set for February 8, 2005. Taxpayer phoned the hearing officer on February 7, 2005 to request that the hearing be rescheduled. Taxpayer and the hearing officer mutually agreed to a one week extension, rescheduling the hearing for February 15, 2005. Taxpayer did not appear for the hearing either in person or by phone. This Letter of Findings is written based upon the information submitted and available within the case file.

I. Use Tax—Assessment; Production Supplies and Parts Washer Cleaner

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-3-2 imposes an excise tax—known as the use tax—on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. There are exemptions to the imposition of the use tax; IC 6-2.5-3-4 exempts property upon which the sales tax has been paid and exempts property eligible under IC 6-2.5-5.

Taxpayer had purchased exempt from sales tax various chemicals for use in its manufacturing operation. Among these was part washer cleaner used in maintenance to clean production equipment. The cleaner was not used to produce product. IC 6-2.5-5-3(b) exempts manufacturing machinery, tools, and equipment if the taxpayer acquiring the property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. IC 6-2.5-5-5.1(b) exempts tangible personal property if the taxpayer acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. IC 6-2.5-5-6 exempts tangible personal property if the taxpayer acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business.

The Department has considered the relevant exemption statutes but because the supplies are used to clean production equipment and are not consumed in the manufacturing of tangible personal property, no exemption for use tax exists in these circumstances.

Taxpayer also had purchased exempt from sales tax other supplies, such as labels, envelopes, ribbons, forms, and reports that were consumed outside of Taxpayer's production operation. Because these supplies are not consumed during the production of tangible personal property or incorporated into tangible personal property, no exemption from use tax exists in these circumstances.

Additionally, Taxpayer had purchased exempt from sales tax other supplies such as chemicals for their boiler that were partially used for taxable purposes such as area heat. Because these chemicals are not consumed during the production of tangible personal property or incorporated into tangible personal property for sale, no exempt use from use tax exists in these circumstances.

FINDING

For the reasons discussed above, Taxpayer's protest is denied.

II. Use Tax—Assessment; Trial Materials

DISCUSSION

Taxpayer used raw materials that had been purchased exempt from sales tax in trials. To be exempt under IC 6-2.5-5-6, the trials must be sold in business. No evidence was presented to demonstrate the trials were sold in business.

FINDING

For the reason discussed above, Taxpayer's protest is denied.

III. Use Tax—Assessment; Materials to Repair Roof Collapse

DISCUSSION

During the audit period, Taxpayer had a roof collapse over a manufacturing area due to heavy snows. Emergency repairs were made rapidly with little contract detail—so that production could be reestablished quickly. An exemption certificate was issued by Taxpayer to the contractor for the materials used in these repairs. Invoices did not disclose sufficient evidence to determine the materials that were taxable and those that were exempt. Taxpayer's engineer estimated that 10% of the materials purchased were for taxable non-production purposes. Communications by the auditor with the contractor identified the use of additional materials that were taxable. These materials were not included in the estimate by Taxpayer's engineer. Reconciliation of the differences in the estimates of taxable and exempt materials could not be accomplished and better information was not available. Due to what appeared to be additional taxable construction beyond the estimates by Taxpayer's engineer, the auditor for the Department determined that 12.5% of the materials purchased exempt from sales tax were used in a taxable manner. This is the best information available as to the taxable amount of constructions materials that were purchased exempt from sales tax. Taxpayer was unable to provide better information.

IC 6-8.1-5-1(b) states that tax assessments made by the Department are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 authorizes the Department to make an assessment of unpaid tax based on the best information available. In this situation, Department has employed the best information available method and Taxpayer has not provided better information to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

IV. Use Tax—Assessment; Machinery, Tools, and Equipment

DISCUSSION

Taxpayer purchased exempt from sales tax machinery, tools, and equipment—such as trash carts, storage cabinets, maintenance and cleaning tools, space heaters, air conditioners, fans, and scales. These purchases were not used within the production process. Taxpayer also purchased exempt from sales tax a chiller and boiler, as well as production equipment partially used for area heating and air conditioning. Taxpayer also purchased exempt from sales tax machinery, tools, and equipment—such as parts for fork lifts and area heating and air conditioning—that the Department determined were used partially outside the production process. Taxpayer provided information to indicate the taxable proportion of use. No additional information was presented to the Department outside of the audit to indicate taxable and exempt use of the above tangible personal property.

IC 6-8.1-5-1(b) states that tax assessments made by the Department are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 authorizes the Department to make an assessment of unpaid tax based on the best information available. In this situation, Department has employed the best information available method and Taxpayer has not provided additional better information to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

V. Use Tax—Assessment; Rental of Tangible Personal Property

DISCUSSION

Taxpayer rented exempt from sales tax equipment that included articulation boom lifts and scissor lifts. These rentals were for maintenance and other taxable uses. Taxpayer also rented exempt from sales tax tow motors determined to be used 30% of the time in a taxable manner for loading and unloading trucks, movement of raw materials and finished goods, and maintenance. IC 6-2.5-4-1 and IC 6-2.5-4-10 imposes sales tax on the retail transaction of rentals—the transfer of tangible personal property for consideration. IC 6-2.5-3-2(a) imposes use tax on the use of tangible personal property acquired in a retail transaction. Use tax is due on these rentals. Taxpayer has not provided additional information subsequent to the audit to rebut the determination of exempt and taxable use.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VI. Use Tax—Assessment; Publications and Subscriptions

DISCUSSION

Taxpayer purchased exempt from sales tax subscriptions, publications, directories, and pamphlets. IC 6-2.5-5-17 exempts newspapers from sales tax. All other publications are taxable. Accordingly, use tax is due.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VII. Use Tax—Assessment; Catering Service Charges

DISCUSSION

Taxpayer purchased catered food upon which service charges were made—but not taxed. Taxpayer also purchased exempt from sales tax other catered food. IC 6-2.5-5-20(c)(3) states that prepared food is not exempt from sales taxation; thus, catered food is taxable.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VIII. Use Tax—Assessment; Other Purchases

DISCUSSION

Taxpayer purchased signs, cleaning supplies, office supplies, software, computer equipment, clothing, roofing and other building materials, video equipment, and charge card purchases from outside Indiana upon which sales tax was not charged.

IC 6-2.5-3-2(a) imposes use tax on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction—regardless of the location of that transaction or of the retail merchant making that transaction. IC 6-2.5-3-4(a) exempts from the imposition of use tax purchases made in which sales tax was paid or the purchase is exempted under IC 6-2.5-5. Taxpayer would need to have shown the Department evidence that either sales tax has been paid on these purchases or that the purchases are exempt under a statutory provision. No such evidence or documentation was provided by Taxpayer.

FINDING

For the reasons stated above, Taxpayer's protest is denied.